

Superseded 1/1/2016

73-5-1 Appointment of water commissioners -- Procedure.

- (1)
 - (a) If, in the judgment of the state engineer or the district court, it is necessary to appoint a water commissioner for the distribution of water from any river system or water source, the commissioner shall be appointed for a four-year term by the state engineer.
 - (b) The state engineer shall determine whether all or a part of a river system or other water source shall be served by a commissioner, and if only a part is to be served, the state engineer shall determine the boundaries of that part.
 - (c) The state engineer may appoint:
 - (i) more than one commissioner to distribute water from all or a part of a water source; or
 - (ii) a single commissioner to distribute water from several separate and distinct water sources.
- (2)
 - (a) The state engineer shall consult with the water users before appointing a commissioner. The form of consultation and notice to be given shall be determined by the state engineer so as to best suit local conditions, while providing for full expression of majority opinion.
 - (b) If a majority of the water users agree upon a qualified person to be appointed as water commissioner, the duties the person shall perform, and the compensation the person shall receive, and they make recommendations to the state engineer on the appointment, duties, and compensation, the state engineer shall act in accordance with their recommendations.
 - (c) If a majority of water users do not agree on the appointment, duties, or compensation, the state engineer shall make a determination for them.
- (3)
 - (a)
 - (i) The salary and expenses of the commissioner and all other expenses of distribution, including printing, postage, equipment, water users' expenses, and any other expenses considered necessary by the state engineer, shall be borne pro rata by the users of water from the river system or water source in accordance with a schedule to be fixed by the state engineer.
 - (ii) The schedule shall be based on the established rights of each water user, and the pro rata share shall be paid by each water user to the state engineer on or before May 1 of each year.
 - (b) The payments shall be deposited in the Water Commissioner Fund created in Section 73-5-1.5.
 - (c) If a water user fails to pay the assessment as provided by Subsection (3)(a), the state engineer may do any or all of the following:
 - (i) create a lien upon the water right affected by filing a notice of lien in the office of the county recorder in the county where the water is diverted and bring an action to enforce the lien;
 - (ii) forbid the use of water by the delinquent water user or the delinquent water user's successors or assignees, while the default continues; or
 - (iii) bring an action in the district court for the unpaid expense and salary.
 - (d) In any action brought to collect any unpaid assessment or to enforce any lien under this section, the delinquent water user shall be liable for the amount of the assessment, interest, any penalty, and for all costs of collection, including all court costs and a reasonable attorney fee.
- (4)
 - (a) A commissioner may be removed by the state engineer for cause.

- (b) The users of water from any river system or water source may petition the district court for the removal of a commissioner and after notice and hearing, the court may order the removal of the commissioner and direct the state engineer to appoint a successor.